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Privately financed infrastructure projects: draft chapters of a legislative guide on privately financed infrastructure projects

Report of the Secretary-General

I. Introduction

1. At its twenty-ninth session, in 1996, having considered a note by the Secretariat on "build-operate-transfer" (BOT) projects (A/CN.9/424), the United Nations Commission on International Trade Law decided to prepare a legislative guide to assist States in preparing or modernizing legislation relevant to those projects.[1] The Commission requested the Secretariat to review issues suitable for treatment in such a legislative guide and to prepare draft materials for consideration by the Commission.

2. At its thirtieth session, in 1997, the Commission considered an annotated table of contents setting out the topics proposed for inclusion in the legislative guide (A/CN.9/438, annex). The Commission also considered initial drafts of chapters I, "Scope, purpose and terminology of the *Guide*", II, "Parties and phases of privately financed infrastructure projects", and V, "Preparatory measures" (A/CN.9/438/Add.1-3, respectively), of the guide. After an exchange of views on the nature of the issues to be discussed and possible methods for addressing them in the guide, the Commission generally approved the line of work proposed by the Secretariat, as contained in those documents.[2] The Commission requested the Secretariat to seek the assistance of outside experts, as required, in the preparation of future chapters and invited Governments to identify experts who could be of assistance to the Secretariat in that task.

3. At its thirty-first session, in 1998, the Commission had before it revised versions of the earlier chapters, including a revised table of contents, a draft of the introduction to the legislative guide, initial drafts of chapters I, "General legislative considerations", II, "Sector structure and regulation", III, "Selection of the concessionaire" and IV, "Conclusion and general terms of the project agreement" (A/CN.9/444/Add.1-5). The Commission considered various specific suggestions concerning the draft chapters, as well as proposals for changing

the structure of the legislative guide and reducing the number of chapters.[3] The Commission requested the Secretariat to continue the preparation of future chapters, with the assistance of outside experts, for submission to the Commission at its thirty-second session.

4. At its thirty-second session, in 1999, the Commission considered a complete draft of the legislative guide, which consisted of the following: "Introduction and background information on privately financed infrastructure projects", and chapters I, "General legislative considerations", II, "Project risks and government support", III, "Selection of the concessionaire", IV, "The project agreement", V, "Infrastructure development and operation", VI, "End of project term, extension and termination", VII, "Governing law", and VIII, "Settlement of disputes" (A/CN.9/458/Add.1-9, respectively). The Commission was informed that the Secretariat had changed the overall structure of the legislative guide and combined some of its chapters. The Commission noted and generally approved the revised structure of the draft legislative guide.[4] The Commission considered various specific suggestions concerning the draft chapters.[5]

II. Structure and contents of the draft legislative guide

5. At the Commission's thirty-second session, in 1999, it was observed that it was the first occasion on which the draft guide was available in its entirety. While it was generally felt that the draft chapters covered most of the central issues pertaining to privately financed infrastructure projects, the view was expressed that the document was rather lengthy and that adjustments were necessary in order to make the guide more accessible to the intended readers.[6] Therefore, while revising the draft chapters so as to reflect suggestions made at the thirty-second session of the Commission, the Secretariat has endeavoured to make the notes as concise as possible, taking into account the broad scope of the guide and the wide variety of issues raised by privately financed infrastructure projects.

Introduction and background information on privately financed infrastructure projects

6. An earlier draft of the introduction was contained in document A/CN.9/458/Add.1. A revised draft, which takes into account suggestions made at the thirty-second session of the Commission,[7] is contained in an addendum to the present document (A/CN.9/471/Add.1).

Chapter I. General legislative and institutional framework

7. An earlier draft of chapter I was contained in document A/CN.9/458/Add.2. A revised draft, which takes into account suggestions made at the thirty-second session of the Commission,[8] is contained in an addendum to the present document (A/CN.9/471/Add.2).

Chapter II. Project risks and government support

8. An initial draft of chapter II was contained in document A/CN.9/458/Add.3. A revised draft, which takes into account suggestions made at the thirty-second session of the Commission,[9] is contained in an addendum to the present document (A/CN.9/471/Add.3).

Chapter III. Selection of the concessionaire

9. An earlier version of this chapter was contained in document A/CN.9/458/Add.4. A revised draft, which takes into account suggestions made at the thirty-second session of the Commission,[10] is contained in an addendum to the present document (A/CN.9/471/Add.4).

Chapter IV. Construction and operation of infrastructure

10. The draft chapter combines issues previously proposed for discussion in two separate chapters, namely, chapters IV, "The project agreement" (contained in A/CN.9/458/Add.5), and V, "Infrastructure development and operation" (also contained in A/CN.9/458/Add.6). A consolidated revised draft, which takes into account suggestions made at the thirty-second session of the Commission,[11] is contained in an addendum to the present document (A/CN.9/471/Add.5).

Chapter V. Duration, extension and termination of the project agreement

11. An earlier version of this chapter (previously numbered chapter VI) was contained in document A/CN.9/458/Add.7. A revised draft, which takes into account suggestions made at the thirty-second session of the Commission,[12] is contained in an addendum to the present document (A/CN.9/471/Add.6).

Chapter VI. Settlement of disputes

12. An earlier version of this chapter (previously numbered chapter VIII) was contained in document A/CN.9/458/Add.9. A revised draft, which takes into account suggestions made at the thirty-second session of the Commission,[13] is contained in an addendum to the present document (A/CN.9/471/Add.7).

Chapter VII. Other relevant areas of law

13. An earlier version of this chapter was contained in document A/CN.9/458/Add.8. A revised draft, which takes into account suggestions made at the thirty-second session of the Commission,[14] is contained in an addendum to the present document (A/CN.9/471/Add.8).

Consolidated legislative recommendations

14. At the thirty-second session of the Commission it was agreed that the legislative recommendations contained in each chapter needed to be reformulated for greater uniformity.[15] With the assistance of experts, the Secretariat has since reviewed the recommendations in their entirety, so as to ensure their coherence and consistency with one another. In order to facilitate the Commission's deliberations, all recommendations contained in the individual chapters have been consolidated into an addendum to the present document (A/CN.9/471/Add.9). The Commission may wish to consider the desirability of including such a consolidation of the recommendations in the final presentation of the guide for the users' ease of reference.

III. Conclusion

15. The Commission may wish to consider that, given the advanced stage of preparation of the draft legislative guide, two days of its upcoming session would be sufficient for a final review of the legislative recommendations and adoption of the guide.

Notes

[1] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17* (A/51/17), paras. 225-230.

[2] Ibid., *Fifty-second Session, Supplement No. 17* (A/52/17), paras. 231-247.

[3] Ibid., *Fifty-third Session, Supplement No. 17* (A/53/17), paras. 12-206.

[4] Ibid., *Fifty-fourth Session, Supplement No. 17* (A/54/17), para. 18.

[5] Ibid., paras. 17-307.

[6] Ibid., para. 18.

[7] Ibid., paras. 22-38.

[8] Ibid., paras. 39-69.

[9] Ibid., paras. 70-96.

[10] Ibid., paras. 97-136.

[11] Ibid., paras. 137-205.

[12] Ibid., paras. 206-253.

[13] Ibid., paras. 287-307.

[14] Ibid., paras. 254-282.

[15] Ibid., para. 21.